

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)

Implementation of the)
Telecommunications Act of 1996:)

Telecommunications Carriers' Use)
of Customer Proprietary Network)
Information and Other)
Customer Information)

CC Docket No. 96-115

) **DOCKET FILE COPY ORIGINAL**

BELLSOUTH OPPOSITION
to
ATSI MOTION TO DENY
BELLSOUTH'S MOTION TO STRIKE ATSI'S COMMENTS

Pursuant to Section 1.45 of the Commission's Rules,¹ BellSouth Corporation, on behalf of BellSouth Enterprises, Inc., BellSouth Telecommunications, Inc., and their affiliated companies ("BellSouth") hereby submits this Opposition to ATSI's "Motion To Deny BellSouth's Motion To Strike ATSI's Comments" filed in this proceeding on October 29, 1996.

By its "motion", ATSI continues to skirt the Commission's rules. ATSI's "motion" is little more than an untimely opposition to BellSouth's previously filed Motion to Strike ATSI's late-filed comments in this proceeding.² Having failed to meet the Commission's requirement that

¹ 47 C.F.R. §1.45.

² See, "BellSouth Motion to Strike Comments of the Association of Telemessaging Services International (ATSI), or in the Alternative, Motion for Leave to File Responsive Pleading ("Motion to Strike") (filed Sept. 27, 1996).

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oppositions to a motion be filed within 10 days of the motion,³ ATSI merely titles its opposition as a separate “motion to deny” and thereby seeks to avoid the Commission’s filing deadlines once again. Accordingly, ATSI’s “motion” should be dismissed.

Of course, as BellSouth pointed out in its Motion to Strike, ATSI’s comments are of scant substantive worth since they do little more than re-hash arguments the Commission has previously considered and rejected in multiple prior CPNI proceedings. Yet, beyond the fact that ATSI’s “motion” is plainly a late-filed opposition to BellSouth’s Motion to Strike and thereby defective on its face, two broader issues are presented by ATSI’s approach to participating in this proceeding. The first is whether a party is permitted to file initial comments in a rulemaking proceeding long after the pleading cycle has closed and without even a scintilla of explanation of why the original deadline could not be met, merely by labeling the comments (on the second try) as an *ex parte* communication. The second issue is whether ATSI’s pleading practice in this case is representative of the minimal procedural standards to which ATSI would have the Commission hold it under the complaint procedures ATSI urges the Commission to adopt under Section 260(b) of the Communications Act.⁴

The Commission’s *ex parte* rules are intended “[t]o ensure that the Commission’s decisional processes are fair, impartial, and otherwise *comport with the concept of due process*.”⁵ Those rules serve a useful purpose in providing opportunities to interested parties to continue to

³ 47 C.F.R. §1.45.

⁴ 47 U.S.C. §260(b). *See, Implementation of the Telecommunications Act of 1996; Telemessaging, Electronic Publishing, and Alarm Monitoring Services, Notice of Proposed Rulemaking*, CC Docket No. 96-152, FCC 96-310 (released July 18, 1996) (“*Telemessaging Safeguards Proceeding*”).

⁵ 47 C.F.R. § 1.1200(a) (emphasis added).

advocate and explain their positions to decision-making personnel within the Commission, subject to appropriate disclosure requirements. The rules are not intended, however, to serve as an opportunity for any one party unilaterally to decide to ignore filing deadlines to which all other parties are expected to adhere. Indeed, the “concept of due process” embodied in the *ex parte* rules is also embodied in the Commission’s rules that require a party to make an appropriate motion and showing to support an extension of time within which to file comments in a rulemaking proceeding.⁶ As BellSouth described in its Motion to Strike, ATSI made no such motion or showing before it decided to extend its own filing deadline for its original submission. Nor has ATSI included in its instant motion any explanation or justification of its late submission, other than that “[n]othing in the Commission’s Rules prevents ATSI from submitting its Ex Parte Comments.”⁷ BellSouth submits that the Commission’s *ex parte* rules were not intended to permit parties individually to choose to make *ex parte* communications in lieu of complying with the Commission’s other procedural requirements. The concept of due process embodied in all the Commission’s rules clearly precludes ATSI’s practice.

Even more troubling is that ATSI’s pleading practice in this proceeding is an apparent indicator of the minimal standard of practice to which ATSI desires to be held in complaint proceedings under Section 260. Such a dilution of due process through loose application of procedural requirements coupled with the adoption of any of the substantive “presumptions” ATSI has advocated for Section 260 complaint proceedings would materially deprive respondent

⁶ See, 47 C.F.R. §1.46(a), (b).

⁷ ATSI Motion to Deny, at 2.

carriers of all vestiges of due process. The Commission should refuse to move down that path by refusing to countenance ATSI's practices in this proceeding.

CONCLUSION

For the reasons set forth above and in BellSouth's Motion to Strike, the Commission should dismiss ATSI's Motion to Deny and should strike from the record ATSI's late-filed comments (which were even later filed again under the guise of *ex parte* comments).

Respectfully submitted,

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CERTIFICATE OF SERVICE

(CC Docket No. 96-115)

I hereby certify that I have this 8th day of November, 1996 served the following party to this action with a copy of the foregoing BELLSOUTH OPPOSITION TO ATSI MOTION TO DENY BELLSOUTH'S MOTION TO STRIKE ATSI'S COMMENTS by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties on the attached service list.


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